

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

S & S SECURITY

Employer

and

Case 19-RC-13943

INTERNATIONAL UNION OF
SECURITY OFFICERS

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding,² the undersigned finds

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All security officers employed by the Employer in Kitsap County, Washington; including "supervisors"; but excluding all office clerical employees, managers, and *supervisors as defined by the Act*, including the manager, operations manager and assistant manager.

¹ The parties waived the filing of briefs.

² The record was left open for receipt of an Employer's post-hearing exhibit. Such exhibit having been received, the hearing is closed.

FACTS

The Employer is engaged in providing security services to various businesses in Kitsap, Mason, and Thurston Counties in the state of Washington. The parties stipulated at hearing that a unit including “all security officers employed by the Employer in Kitsap County” is an appropriate unit. The parties further stipulated that all such security officers are guards within the meaning of Section 9(b)(3) of the Act. The sole issue concerns the Employer’s contention that Jason Brown, Chris Guthrie, Dan Sirotzki, and Ken Gonella are statutory supervisors.

The Employer’s primary client in Kitsap County is Harrison Memorial Hospital in Bremerton. Other clients in the county include Max Hale Center,³ Orchard Foods (Taco Bell), Kitsap Transit, and Bremerton Doctor’s Clinic, all located in Bremerton. At Harrison Hospital, the Employer provides escorts for hospital employees; patient watch for combative patients; a parking lot shuttle service; assistance with moving large patients, assistance in removal of bodies from hospital morgue by mortuary personnel; receiving of records; assistance in the food service department during the evening;⁴ and assistance on the switchboard. At the Doctor’s Clinic, the Employer provides escorts for the clinic staff for a few hours during mornings and afternoons, and response if a patient is out of control. For Kitsap Transit, the Employer provides a guard at the Bremerton ferry terminal seven nights a week, from 11:30 p.m. to 4:30 a.m. At Max Hale, the Employer provides a front desk person, from 6:00 p.m. to 6:00 a.m., who monitors entries and exits, and makes rounds of the facility. At Taco Bell, the Employer provides a presence in the parking lot on weekends from 8:00 p.m. to 2:00 a.m.

Leon Smith is the owner and manager of the Employer. Melinda Green is the operations manager, and Morgan Johnson is the assistant manager. The parties stipulated that Smith, Green, and Johnson are managerial employees as defined by the Board, and, further, that Pamela Ancich and Leann Smith are office clerical employees excluded from the unit. The four individuals at issue herein have the title “supervisor” and report to Johnson. For convenience, such individuals will be referred to as “supervisors” herein, without regard to whether they are statutory supervisors.

The Employer’s guards are present at Harrison Hospital 24 hours per day, seven days per week, with one supervisor there on each shift. Sirotzki has the day shift, Monday through Friday; Brown has swing shift; Guthrie has night shift. Gonella relieves Guthrie on Guthrie’s days off. The record does not reveal who relieves Sirotzki and Brown on their days off. In addition, Leon Smith is on duty during the weekday day shift at the hospital, and a manager (i.e., Smith, Green, or Johnson) is always available by pager. Each supervisor has two or three guards on shift with him at the hospital. In addition, on the day shift, there are about three guards who handle a parking lot shuttle service. Guards who work at sites other than the hospital first report for work at the hospital, where the supervisor on duty checks out equipment to them. There is one guard per site assigned to each of the non-hospital sites. The guard at the Doctor’s Clinic works the middle of the day shift in the hospital, during the hours when no guard is required at the clinic.

The record does not fully explain the assignment of duties to officers in the hospital. There is a south officer, a west officer, and a central officer. The supervisor decides which officer will be south and so on, usually by rotating the officers on a daily basis. The supervisor may also ask the officers to choose an assignment. An officer is assigned to do patient watches, another to the switchboard. At night, an

³ A facility that houses low-income people.

⁴ At night, there are pre-made foods available in the cafeteria. The security officer assists employees charging foods on their meal tickets.

officer is assigned to the food service area. The record does not reconcile such assignments as patient watches with the assignments to south, west, and central. Thus the record is unclear regarding the assignment process, and further does not reveal whether any assignments are more onerous than others. In addition, there is virtually no specific evidence in the record regarding the shuttle service. The record does not clearly establish that the employees who handle the shuttle service function as guards, or whether they also rotate through the guard assignments at the hospital. I conclude that it was the parties' intent to stipulate that the shuttles are guards and included in the Unit. Sirotzki tells the shuttle crew who will drive the shuttle, who will do the parking,⁵ who will be at the front door helping patients getting in and out of cars. Another supervisor testified that currently a supervisor is supposed to drive the shuttle van because it was vandalized. The record does not reveal the hours of operation of the shuttle, nor whether the passengers are hospital employees or patients or both.

The record does not reveal who decides whether an officer is assigned to the hospital or to a non-hospital site.⁶ Officers who are assigned to non-hospital sites report for work to the supervisor at the hospital. If such an officer calls in sick, or simply does not show up, the supervisor must find a replacement. The schedule of all officers is posted in an office at the hospital. The supervisor reviews the schedule to find someone who is available to work the shift without requiring overtime, calls such person, and offers the work. An officer can decline such call. The supervisor also notifies the manager on call, either before or after obtaining someone to work the shift. The supervisor can also send an officer out from the hospital to work at a non-hospital site, and then obtain a relief officer to work in the hospital. An officer so directed to go to another site is required to do so. If necessary to cover a shift, a supervisor can have an officer work overtime, but only in situations where an officer has called in sick or not shown up.

Supervisors have authority to give verbal and written reprimands. There is no substantive evidence that the Employer has any progressive disciplinary system,⁷ or that any employee has been suspended or fired solely on the basis of having received some specified number of written reprimands. The record describes two instances in which officers were terminated. In one instance, an officer who performed her work very well and was liked by the hospital, but had a record of repeated absenteeism. Supervisor Sirotzki compiled a report on the officer's attendance record, and recommended termination to Smith. The hospital preferred that the officer be retained, and Smith counseled the officer. However, her absenteeism continued, and Smith then terminated her. Sirotzki also recommended that another officer be terminated. The officer had a record of being in the wrong place, being out of uniform, absenteeism, and being out of contact. Sirotzki gave the officer at least one written reprimand. Sirotzki also reported the

⁵ The record does not reveal what activities are involved in "doing the parking."

⁶ One or more officers may not be authorized to work at a particular site. Only Smith, Green, and Johnson have such information. The record does not explain why an officer would not be so authorized, except that it is "of a personal nature."

⁷ The written job description for supervisors states that they "provide progressive discipline for the Security Officers." Asked by the hearing officer to describe the Employer's progressive discipline, Smith testified as follows:

THE WITNESS: Progressive discipline would be the verbal warnings, and we do ask for the verbal warnings to be written just as documentation. It would also be part of the written reprimand. There again, for those situations where someone would be intoxicated--

HEARING OFFICER: I meant progressive. In other words, the first go you get an oral reprimand, then the next level would be a written reprimand.

THE WITNESS: Depending on the severity the-- it's one of the more severe things. Subordination could be grounds for immediate termination. That one should have a written reprimand.

officer's conduct to Smith, and recommended termination after an occasion on which the officer, who was supposed to be driving the parking lot shuttle, was found by Sirotzki at the front desk doing homework. Smith testified that Johnson had also counseled the officer, and that after Johnson discovered that the officer has falsified his log, Smith and Johnson decided to terminate him. Thus, it is clear that they were not relying on Sirotzki's unreviewed recommendation in making the termination decision.

Smith testified that supervisors have authority to suspend or fire an officer who is intoxicated while on duty or is grossly insubordinate. He gave an example of an occasion in 1996 when Green was a supervisor. She received information that an officer in full uniform was in a local bar drinking. She went to the bar and terminated the officer on the spot. Smith said that Green had earlier terminated another officer who had had liquor on his breath, and that another former supervisor, Scot Mormon, had also terminated an officer for intoxication, but Smith offered no specific details of either event.

Supervisors may recommend individuals for hire. In such instances, Smith also considers information provided on the job application and information from prior employers in making the hiring decision.

The only specific example in the record of a supervisor authorizing overtime is an occasion when officer Tom Trichel was on patient watch and the patient would communicate with no one but Trichel. The nursing staff requested that Trichel stay until the patient was calmed down, and the supervisor authorized the necessary 15 or 20 minutes of overtime. Another supervisor testified more generally that he has had to assign overtime two or three times in the past six months when a guard became ill while on shift and had to be replaced. Employer policy discourages the assignment of overtime.

No formal evaluations of employees have been done since 1997. Smith testified that in the very near future, the supervisors will be evaluating employees. He said that such evaluations will not have any impact on wages, but that they could result in a requirement that an individual fulfill some unspecified educational "thing," and that a poor evaluation would have an impact on future promotional possibilities. He did not specifically testify that the Employer would rely solely on a supervisor's evaluation of an employee in making any decision regarding that employee.

On occasion, it is necessary to "lock down" an area of the hospital in the face of a perceived threat. For example, on one occasion the father of a newborn made threats against the mother and the baby. Such threats were communicated to the supervisor on duty by the baby's grandfather. The testimony regarding lock downs is not particularly clear, i.e., there is testimony that the lock down decision is made by hospital personnel, and other testimony that suggests that the decision is made by the security supervisor. It does appear, however, that the supervisor can proceed with the lock down, which involves locking doors and posting a guard, without first consulting higher management within the Employer. A supervisor has some undefined authority with respect to a "code 28", which involves an aggressive or violent patient or staff member. There is testimony that the supervisor is "in charge," in conjunction with the hospital's house supervisor, but there is no specific evidence as to what being in charge entails.

Smith testified without specific examples that supervisors have "authority to use independent judgment to make sure that a shift is run properly." Smith said that a supervisor's main function is to make sure that payroll information gets taken care of. To that end, supervisors complete a "site check-in sheet" on which they note who has come to work at what time, what time they went into service, and what time they went out of service. Supervisors perform regular guard duties, including lost and found investigations and "valuable details."⁸ There is no evidence with respect to the amount of time a

⁸ Undefined in the record.

supervisor spends performing regular guard duties as compared to the amount of time spent on supervisory functions. The supervisor is expected to respond to all codes, such as code 28 for combative patients, code 199 for respiratory arrest, or code 10 for fire. Supervisors are paid \$7.75 per hour, while rank-and-file officers are paid \$7.25. The pay is the same on all shifts. There are no fringe benefits.

CONCLUSIONS

Section 2(11) of the Act defines a "supervisor" as:

. . .[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To be found a supervisor, it is not necessary that an individual possess all of the powers enumerated in Section 2(11); possession of any one of them is sufficient, but the evidence must establish that the use of independent judgment would be *required* in the exercise of any such supervisory powers. *T.K. Harvin & Sons*, 316 NLRB 510, 530 (1995).

The supervisor on a shift decides which guard will go to which post or duty within the hospital, but the record lacks evidence that such decisions require any independent judgment. On this record, it appears that such decisions are merely routine and ministerial. The same can be said of the supervisor's function in covering a shift when an officer calls in sick or fails to appear for work. The Employer must provide an officer in conformance with its contract with its client; the shift cannot be left uncovered. The Employer has an established policy to be used in determining which officer should be called in. The evidence does not establish that any independent judgment is required.

The evidence regarding supervisors' authority to give oral and written reprimands does not establish statutory authority to discipline employees. There is no evidence that the Employer has any progressive disciplinary policy. Nor is there any evidence that such reprimands have any significant impact on an employee's job status. *Tucson Gas & Electric Company*, 241 NLRB 181 (1979). Evidence that supervisors have authority to terminate officers on the spot in the event of intoxication or gross insubordination also does not establish statutory authority to discipline or to terminate. The Board has found that in such cases of flagrant violations the offenses are obvious violations of the employer's policies and speak for themselves; no independent judgment is involved. *Loffland Brothers Company*, 243 NLRB 74, 75, fn. 4 (1979).

The examples in the record of Sirotzki recommending the terminations of two officers do not establish statutory authority to effectively recommend termination. The mere fact that Sirotzki made such recommendations, and the Employer thereafter terminated the officers is insufficient. "Effective recommendation" means that the recommended action was taken with no independent investigation by superiors. *ITT Lighting Fixtures*, 265 NLRB 1480 (1982). Here, in the one case, after Sirotzki had made his recommendation, Smith counseled the officer further, and terminated her only after her absenteeism continued. In the other case, Johnson had also counseled the officer, and the precipitating event for the termination was Johnson's discovery that the officer had falsified his log. Thus, the supervisor did not effectively recommend the termination.

The record does not establish that supervisors effectively recommend hire, inasmuch as Smith conducts his own inquiry regarding an applicant's qualifications before hiring, regardless of a supervisor's recommendation. The evidence with respect to the supervisors' role in preparing evaluations

of employees is insufficient to establish that they have statutory authority to reward or discipline employees. No evaluations have been done for at least two years. The evidence regarding past and future evaluations is too vague to be determinative. In any event, the question is not whether evaluations are written by an individual, but the impact that such evaluations have on employment. The record shows no significant, independent impact.

With respect to responsible direction, it is clear that a supervisor grants overtime only in instances of obvious, dire necessity, if there is no other way to cover a shift, or if it is requested by hospital personnel. There is no evidence that any independent judgment is required. Smith's testimony that supervisors have "authority to use independent judgment to make sure that a shift is run properly," is merely conclusionary and insufficient, without more, to establish statutory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). The record evidence with respect to the supervisor's role and responsibilities in lock down or code 28 situations is insufficient to establish that the supervisor is required to exercise any independent judgment with respect to giving direction to any of the Employer's employees, or even that the supervisor in those situations gives *any* direction to any of the Employer's employees.

The burden of proving that an employee is a statutory supervisor rests on the party alleging that such status exists. *T.K. Harvin & Sons*, supra. Here, the Employer has failed to meet its burden. Furthermore, secondary indicia, while never conclusive, also support a conclusion that the supervisors herein are not statutory supervisors: An acknowledged manager is present on-site at the hospital or readily available by pager at all times. The number of employees reporting to each supervisor is relatively small, and a finding that the supervisors have statutory authority would result in a high ratio of about one manager or supervisor for every three employees, in a highly routinized operation. The 50 cent hourly premium for supervisors does little to support a conclusion of supervisory status.

I conclude, therefore, that Brown, Guthrie, Sirotzki, and Gonella are not supervisors within the meaning of the Act, and shall include them in the Unit.

There are approximately 22 employees in the Unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL UNION OF SECURITY OFFICERS.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election.

Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before May 4, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted. To speed preliminary checking and the voting process itself, the names must be alphabetized.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 11, 2000.

DATED at Seattle, Washington, this 27th day of April, 2000.

/s/ PAUL EGGERT

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